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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re JAYDEN R. et al., Persons
Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESSE R.,

Defendant and Appellant.

B271031

(Los Angeles County
Super. Ct. No. DK14320)

APPEAL from order of the Superior Court of Los Angeles County, D.L. Losnick, Juvenile Court Referee. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

Father Jesse R. appeals from the jurisdictional findings and disposition orders removing his then one-year-old son Joshua R., and three-year-old son Jayden R. from his custody, claiming no substantial evidence supported the findings and orders. We affirm.

BACKGROUND

Father had been in a domestic relationship with the children's mother, Crystal G., until about four months before the events that led to these dependency proceedings. When they broke up, mother and the children moved in with mother's sister. Mother and father had no formal custody agreement but mother allowed father visitation with the children.

On September 19, 2015, father went to mother's home to see the children. Maternal grandfather, a convicted sex offender, was at the residence. The two had never met before. Father did not like it that maternal grandfather was allowed to be around his children. He and maternal grandfather exchanged angry words; a scuffle ensued; father armed himself with a knife, then dropped the knife and the two men engaged in mutual combat. Mother broke up the fight. Father took the children and left. He called police and filed a report against maternal grandfather for battery. During the investigation, father told police, "If you find his body [(maternal grandfather)], you know where to find me."

A little over a month later, when maternal grandfather was working construction at an apartment building adjacent to mother's residence, father confronted him at the job site, armed with an aluminum baseball bat. Father told maternal grandfather he hated him and did not like having maternal grandfather around his children. They exchanged words, and father struck maternal grandfather with the baseball bat.

Maternal grandfather called police, who took a report for assault with a deadly weapon.

A couple of weeks later, mother obtained a temporary restraining order against father precluding him from having any contact with mother, her family, and the children until a further hearing in two weeks. Father was served with the restraining order two days later. Father immediately went to mother's residence. Mother was at work, and her sister was home with the children. Father forced the door open, pushed maternal aunt out of his way, and grabbed the children. Maternal aunt reminded father he was in violation of the restraining order. Father told her to mind her own business and left with the two small children in his car, without car seats.

The maternal aunt called police. Officers called father and told him to bring the children back home. He refused and warned the officers that if they tried to stop him, "there will be trouble." Police generated two crime reports, one for battery against maternal aunt and one for child abduction. Father was arrested at his mother's home and booked on the two charges. The children were recovered unharmed.

The court sustained allegations pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b)¹ that father had the two violent altercations with maternal grandfather described above, and transported the children in his car without safety seats, all of which endangered them and placed them at risk of serious harm. The court removed them from father's custody, placed them at home with their mother, and ordered enhancement services for father.

¹ All further statutory references are to the Welfare and Institutions Code.

DISCUSSION

1. **There Was Substantial Evidence to Support the Jurisdictional Order.**

“‘In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.]’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “The ultimate test is whether a reasonable trier of fact would make the challenged ruling considering the whole record.” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

Jurisdiction is proper if there is a substantial risk the children will suffer “serious physical harm or illness” as a result of father’s failure to adequately protect them. (§ 300, subd. (b).) This jurisdictional requirement “ ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future’ [Citation.]” (*In re James R., supra*, 176 Cal.App.4th at p. 135.)

The Supreme Court tells us that “section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction.” (*In re I.J., supra*, 56 Cal.4th at p. 773.) “The legislatively declared purpose . . . ‘is . . . to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*’ (§ 300.2, italics added.) “The court need not wait until a child is seriously abused

or injured to assume jurisdiction and take the steps necessary to protect the child.’ [Citation.]” (*Ibid.*)

Father argues that the incidents with maternal grandfather did not place the children at substantial risk of serious physical harm, citing the evidence that the children were not harmed by his attacks on maternal grandfather or by having been transported in his car without safety seats, and arguing such events are unlikely to recur. We do not agree with father’s view.

While the children did not actually witness father’s attacks on maternal grandfather and were not injured while driving in father’s car without required child restraints, the evidence of father’s unresolved violent angry outbursts supported the juvenile court’s finding of a substantial risk of serious physical harm to the children. “[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) “Children can be ‘put in a position of physical danger from . . . violence’ because, ‘for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg’” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576, quoting *In re Heather A.*, *supra*, at p. 194; cf. *In re Eric B.* (1987) 189 Cal.App.3d 996, 1003 [“Reasonable apprehension stands as an accepted basis for the exercise of state power.”].)

The purpose of dependency proceedings “is to prevent risk, not ignore it.” (*In re Eric B.*, *supra*, 189 Cal.App.3d at p. 1004.) The juvenile court did not err in this case.

2. Substantial Evidence Supports the Dispositional Order.

Father also challenges the sufficiency of the evidence to support the court's dispositional order removing the children from his custody. The Los Angeles County Department of Children and Family Services (Department) correctly points out that the children were not removed under section 361, because it is undisputed that father did not have physical custody of his children, and he did not request custody of the children. As his counsel argued to the court at the jurisdiction and disposition hearing, "It is important to note that the children primarily live with the mother, and the father just has visitation."

Under section 361, a dependent child "shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following circumstances . . . : [¶] . . . There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (*Id.*, subd. (c)(1).)

Since father did not have physical custody of the children at the time the petition was filed, section 361 does not apply. Therefore, there was no need for the trial court to make dispositional findings of clear and convincing evidence of danger to the children or reasonable means to protect them without removal from their home. Indeed, the children were returned home in the custody of their mother, and the record is clear that

father was granted *enhancement* services. Again, as the Department correctly points out, if the children had been removed from father pursuant to section 361, he would have been entitled to *reunification* services. (§ 361.5, subd. (a).)

As father has not challenged any other dispositional order, we need not discuss disposition further.

DISPOSITION

We affirm the jurisdiction and dispositional orders.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.